

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ANA REYES, ET AL.,

Plaintiffs,

v.

COUNTY OF KERN, ET AL.,

Defendants.

Case No. 1:21-cv-01340-CDB

ORDER ON STIPULATION AMENDING
SCHEDULING ORDER **AS MODIFIED**

(ECF No. 19)

Defendants removed this case from Kern County Superior Court on September 7, 2021. (ECF No. 1). In the operative complaint, Plaintiff asserts causes of action for violation of civil rights (42 U.S.C. § 1983), wrongful death, medical malpractice and related claims of negligence.

On December 7, 2022, the Court issued a scheduling order that provided the parties with, among other things, a nine-month period to complete fact discovery. (ECF No. 12). In a joint report filed April 22, 2022, the parties represented to the Court that discovery was proceeding on-schedule and no impediments to completing discovery were anticipated. (ECF No. 14).

On September 12, 2022 – the date set for the close of fact discovery – Defendants filed a stipulation in which the parties requested that the Court grant a four-month continuance in discovery, motion and trial dates. (ECF No. 16). The supporting declaration of Defendants’ attorney Kathleen Rivera represented that such a continuance was warranted given delays in discovery “due to the press of business,” including the loss from Ms. Rivera’s office of three

attorneys eight months prior. Ms. Rivera also explained that this case has produced a voluminous record of over 2,500 pages in documents. *Id.* at 4. There is no indication in the affidavit or stipulation as to why this information was not included in the parties’ mid-discovery joint report filed in April 2022. *See* Local Rule 144(d) (“Counsel shall seek to obtain a necessary extension from the Court or from other counsel or parties in an action as soon as the need for an extension becomes apparent.”). In its order on the stipulation, the Court found good cause shown and granted what it termed a “lengthy” continuance as requested by the parties. (ECF No. 17). The Court stated: “The Court will not grant further continuances, absent good cause, which will be narrowly construed.”

On December 20, 2022, Plaintiffs filed a stipulation in which the parties request a second, 120-day extension in the discovery, motion and trial dates. (ECF No. 19). The stipulation is supported by the declaration of Plaintiffs’ attorney Dev Das in which he attests that an additional extension is warranted in part because another attorney is replacing him and needs time to familiarize himself with the case file. Mr. Das echoes Ms. Rivera’s previous invocation of “the press of business” as further justification for the requested extension.

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Under Federal Rule of Civil Procedure 16, a scheduling order “may be modified only for good cause and with the judge’s consent.” Fed. R. Civ. P. 16(b)(4). “Rule 16(b)’s ‘good cause’ standard primarily considers the diligence of the party seeking the amendment.” *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992).

Separately the Court may deny a motion for leave to amend if permitting an amendment would, among other things, cause an undue delay in the litigation or prejudice the opposing party. Courts have found amendments to be prejudicial when leave to amend is requested as a discovery deadline nears or has already passed. *See, e.g., Zivkovic v. So. Cal. Edison Co.*, 302 F.3d 1080, 1087 (9th Cir. 2002); *Lockheed Martin Corp. v. Network Sols., Inc.*, 194 F.3d 980, 986 (9th Cir. 1999). Prejudice is inherent where the requested leave to amend is made shortly before discovery closes with a looming trial date and pending dispositive motions.

Based on the pleadings, the earlier request for and grant of a four-month extension, and

Mr. Das's declaration filed in connection with the current request for extension, the Court finds good cause to grant only a 60-day extension.

Accordingly, based on the parties' representations in the stipulation and for good cause shown, IT IS HEREBY ORDERED that the scheduling order be amended as follows:

<u>Deadline</u>	<u>Current</u>	<u>Amended</u>
Discovery cut off:	01/12/2023	03/13/2023
Expert Disclosure:	01/26/2023	03/27/2023
Supp. Expert Disclosure:	02/27/2023	04/28/2023
Expert Discovery Cut Off:	03/14/2023	05/15/2023
Non Dispositive Motion Filing:	04/05/2023	06/05/2023
Non Dispositive Motion Hearing:	05/03/2023	07/06/2023
Dispositive Motion Filing:	04/28/2023	06/26/2023
Dispositive Motion Hearing:	05/23/2023	07/25/2023
Pre-Trial Conference Date:	07/10/2023	09/08/2023
Trial	08/21/2023	10/23/2023

Further requests for discovery, motion or trial extensions based on "press of business" reasons are strongly discouraged and no requests for extension will be granted without a showing of diligence by the parties and good cause.

IT IS SO ORDERED.

Dated: **December 21, 2022**


UNITED STATES MAGISTRATE JUDGE